

PUBLIC DEFENDER AGREEMENT

General Contract Douglas D. Terry

THIS AGREEMENT is made effective this 1st day of January, 2011, by and between WASHINGTON COUNTY, a political subdivision of the State of Utah, hereinafter referred to as COUNTY, and DOUGLAS D. TERRY, an attorney licensed by the Utah State Bar Association, doing business as DOUGLAS D. TERRY & ASSOCIATES, ATTORNEYS AT LAW, P.C., hereinafter referred to as DEFENDER.

A. THE COUNTY'S AGREEMENTS:

1. In exchange for DEFENDER's performance of the services outlined herein commencing January 1, 2011 and continuing through December 31, 2011, the COUNTY agrees to pay DEFENDER Four Thousand Dollars (\$4,000.00) per month and continuing through DEFENDER's performance of this AGREEMENT.

2. The COUNTY agrees to reimburse DEFENDER for expenses incurred after prior court approval for (1) witness fees, (2) costs of transcripts or depositions on any first appeal as of right, (3) costs of printing or typing briefs on any first appeal of right, (4) investigatory costs, and (5) other extraordinary expenses as defined by Utah Code Ann. § 77-32-303.5 (1953, as amended) that are approved by an applicable court. DEFENDER shall be responsible for paying all other expenses necessary to perform the required services, including but not limited to travel costs, research, additional copies, typewriting expenses, paralegal assistance, and legal clerks, etc., such costs being expressly included in the contract price.

3. The COUNTY agrees that DEFENDER may engage in the private practice of law so long as such private practice does not impair DEFENDER's ability to provide zealous and loyal representation to clients represented by DEFENDER pursuant to the terms of this AGREEMENT.

B. THE DEFENDER'S AGREEMENTS:

1. DEFENDER agrees to perform the duties set forth in Utah Code Annotated § 77-32-301 (1953, as amended) for any indigent criminal defendants assigned to DEFENDER by any applicable court within Washington County during the twelve (12) month period commencing January 1, 2011 and ending on December 31, 2011. The duties specifically include:

- a. providing timely and competent legal representation;
- b. providing the investigatory resources necessary for a complete defense;
- c. assuring undivided loyalty to the client;
- d. proceeding with a first appeal of right;
- e. prosecuting other remedies before or after a conviction, considered by DEFENDER to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

2. Unless a conflict of interest arises as set forth in paragraph C.1 of this AGREEMENT, DEFENDER agrees to provide legal advice and representation through all stages of State or County criminal proceedings for indigent persons assigned to the DEFENDER who have been charged with committing any criminal

offense in Washington County under the Utah Code Annotated or Washington County ordinances as required by this AGREEMENT.

3. Unless there is a conflict of interest as set forth in paragraph C.2 of this AGREEMENT, during the twelve (12) month period commencing January 1, 2011 and ending on December 31, 2011, DEFENDER agrees to proceed with a first appeal as of right for any qualified indigent criminal defendants assigned to DEFENDER by a district court judge of Washington County, a justice of the Utah Court of Appeals, or a justice of the Utah Supreme Court. DEFENDER further agrees to continue representation of those indigent criminal defendants whose first appeals as of right are currently pending as of the ending date of this AGREEMENT. DEFENDER's duties specifically include:

- a. providing timely and competent legal advice and representation at all stages of the first appeals of right except for other and subsequent discretionary appeals or discretionary writ proceedings;
- b. providing the investigatory resources necessary for a complete defense; and
- c. assuring undivided loyalty to the client.

4. During the term of the AGREEMENT, DEFENDER agrees to represent the first appeal as of right for any qualified indigent criminal defendants transferred to DEFENDER as a result of a conflict of interest arising between the indigent defendant and any other public defender under contract with the COUNTY.

5. DEFENDER agrees that the duties encompassed by this AGREEMENT require DEFENDER to represent approximately one-sixth of all adult indigent criminal cases assigned to a public defender by the applicable courts within Washington County during the year 2011. DEFENDER agrees to cooperate with other public defenders and the courts in Washington County in determining the method and means for allocating indigent cases and to abide by the method implemented.

6. During the term of this agreement, DEFENDER agrees to represent the case of any indigent defendant transferred to DEFENDER by an applicable court as a result of a conflict of interest arising between the indigent defendant and any other public defender under general contract with the COUNTY. A conflict of an indigent defendant assigned to a public defender under general contract with the COUNTY shall be assigned among the six (6) public defenders under general contract with the COUNTY as the first choice for conflict assignment.

7. DEFENDER agrees to represent minors, parents, guardians, or custodians in juvenile court when a conflict arises with a juvenile court public defender and when appointed or requested to do so by a juvenile court judge as provided in Utah Code Ann. § 78-3a-913 (1953, as amended). An indigent juvenile case shall be assigned among the six (6) public defenders under general contract with the COUNTY as the second choice for conflict assignment (the first choice for conflict assignment shall be the juvenile court public defender).

8. DEFENDER agrees to represent any indigent defendant assigned by the Washington County Justice Court as a result of a conflict of interest arising between the indigent defendant and the public defender of the Washington County Justice Court under contract with the COUNTY. Such an assignment shall be assigned among the public defenders under general contract with the COUNTY, as the first choice for conflict assignment,

and to the juvenile court public defenders under contract with the COUNTY, as the second choice for conflict assignment.

9. Upon appointment by an applicable court, DEFENDER agrees to represent indigent persons who are being held in custody in Washington County and who are seeking an extraordinary writ under the Rules of Civil Procedure in the nature of a Writ of Habeas Corpus.

10. Upon appointment by an applicable court, DEFENDER shall provide legal assistance in representation of those persons subject to involuntary commitment proceedings in Washington County pursuant to Utah Code Ann. § 62A-15-631(9) (a) (1953, as amended).

11. DEFENDER agrees not to act on a case as a public defender until an applicable court has made an order of appointment and a determination of indigency.

12. DEFENDER agrees to maintain an office in Washington County, Utah.

13. DEFENDER agrees to bear all expenses related to providing the services rendered under this Agreement except those specifically outlined in this AGREEMENT and approved in advance by the applicable court.

14. Before commencing work under this AGREEMENT, DEFENDER agrees to file a Certificate of Insurance with the Washington County Clerk, showing that a valid worker's compensation policy exists and provides coverage for DEFENDER and any employees or subcontractors of DEFENDER.

15. DEFENDER agrees to maintain a current active license with the Utah State Bar and to comply with the Utah Supreme Court Rules of Professional Practice, including the Rules of Professional Conduct and the Rules of Lawyer Discipline and Disability.

16. DEFENDER agrees to abide by all laws of the United States, the State of Utah and Washington County and acknowledges that violation of any such law (except for minor traffic violations that do not involve alcohol or drugs) constitutes cause for termination of this AGREEMENT.

17. DEFENDER agrees that DEFENDER and DEFENDER's associates, agents, or subcontractors will comply with Title VII of the Civil Rights Act of 1964, as amended, and that no person shall on the grounds of race, color, religion, sex or national origin be excluded from participation in, be denied the benefits of this AGREEMENT, or be otherwise subjected to discrimination under this AGREEMENT.

18. Except for those cases with which there is a conflict of interest, DEFENDER agrees to assume all pending public defender cases previously assigned to a predecessor public defender and to immediately file appropriate notices of entry of appearance in those cases.

19. Upon the termination of this AGREEMENT, DEFENDER agrees to continue representation, at no additional cost to the COUNTY, of all pending cases that cannot practically be transferred to an incoming public defender and to cooperate in the transfer of all other cases.

C. MUTUAL TERMS:

1. If DEFENDER is of the opinion that a conflict exists between two or more defendants assigned to DEFENDER under this AGREEMENT, or if a conflict of interest exists that would preclude DEFENDER from

rendering the undivided loyalty required by law and this AGREEMENT, DEFENDER will, after notice to the Washington County Attorney, present the relevant facts and circumstances, as far as practical without disclosing confidences, to the court having jurisdiction over the pending case for determination as to whether such a conflict exists. The Court's determination regarding the existence of a conflict binds both COUNTY and DEFENDER for the purposes of this AGREEMENT.

If the conflict is the result of DEFENDER's private representation of an individual, DEFENDER is responsible for providing replacement counsel and all costs related thereto. In all other circumstances, the COUNTY will provide replacement counsel.

2. If a conflict exists between the DEFENDER and an indigent defendant in the first appeal as of right for any qualified indigent defender, the appeal shall be assigned by the Lead Public Defender of the County among the six (6) public defenders under general contract with the COUNTY as the first choice for conflict assignment.

3. The parties agree that the term of this AGREEMENT shall be twelve (12) months dating from January 1, 2011 through December 31, 2011, both dates inclusive.

4. The parties agree that either party shall have the right at any time after the effective date of this AGREEMENT to terminate this AGREEMENT without cause by giving the other party ninety (90) calendar days written notice. If notice is so given, this AGREEMENT shall terminate upon the expiration of the 90 calendar days and the liability of the parties hereunder for the further performance of the terms of this AGREEMENT shall thereupon cease, but neither party shall be relieved of the duty to perform its obligations up to the date of termination.

5. The parties agree that this AGREEMENT may be terminated for cause upon providing seven (7) calendar days written notice. The parties agree that failure to comply with any term of this AGREEMENT constitutes cause and is grounds to terminate the AGREEMENT. The parties agree that a previous failure to enforce any provision of this AGREEMENT does not constitute a waiver of the right to subsequently enforce that provision or any other provision.

6. The parties agree that DEFENDER is an independent contractor and neither DEFENDER nor any agent, employee, or servant of DEFENDER shall be deemed an agent, employee or servant of the COUNTY. This AGREEMENT is for professional services and DEFENDER is not an employee of COUNTY and is not entitled to the benefits provided by the COUNTY to its employees. The DEFENDER solely controls the method and manner of delivering the services required by this AGREEMENT.

7. The parties agree to indemnify and hold one another harmless from any claims, suits, causes of action, damages, or costs that may arise as a result of the negligent or intentional acts of themselves or their agents.

8. The AGREEMENT shall not, nor shall any interest in the AGREEMENT, be assignable, as to the interest of the DEFENDER, without the prior written consent of the COUNTY.

9. The parties agree that any disputes regarding this AGREEMENT shall first be submitted to non-binding mediation. If mediation is unsuccessful in resolving the dispute, the parties agree to submit the dispute to binding arbitration pursuant to the rules of the American Arbitration Association.

10. The parties agree that this AGREEMENT constitutes their entire agreement and any changes or modifications must be agreed to in writing by both parties and approved by the County Legislative Body in a public meeting.

DATED this ____ day of _____, 20__.

ATTEST:

WASHINGTON COUNTY

WASHINGTON COUNTY CLERK

JAMES J. EARDLEY, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

DEFENDER

Attorney at Law

SUBSCRIBED and SWORN to before me this ____ day of _____, 20__.

NOTARY PUBLIC

APPROVED AS TO FORM:

BROCK BELNAP
WASHINGTON COUNTY ATTORNEY